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MEMO ENDORSED

April 3, 2024

VIA ECF

Hon. Edgardo Ramos, U.S.D.J.
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

The deadline for Defendants to file their opposition to the motion is extended, until May 15, 2024. Plaintiffs are directed to file their response by June 5, 2024. SO ORDERED.



Edgardo Ramos, U.S.D.J.
Dated: 4/5/24
New York, New York

Re: Neor, et ano. v. Acacia Network, Inc., et. al.
No. 22-cv-04814 (ER)

Dear Judge Ramos:

We represent Defendants in the above-referenced matter. For the reasons set forth below, we write to request a 30 day extension from the date all depositions are complete to submit our Opposition to Plaintiffs' Motion for Conditional Collective Certification which is currently due to be filed on April 15, 2024. The bases for this request are set forth below.

As the parties previously informed the Court on March 15 (Dkt. 82), on February 8, Defendants confirmed that Plaintiffs Tyron Wallace and Giitou Neor's depositions would be held on March 12 and March 14; however, on March 6, Plaintiffs' counsel CK Lee advised that he was no longer available on those dates or any other date during the fact discovery period to complete all depositions. As such, pursuant to Mr. Lee's request, we rescheduled Wallace's deposition for March 29 and Neor's deposition for April 1, and the parties submitted a joint request for an extension of the discovery deadline, which was granted until April 22. On March 29, approximately twenty minutes before Wallace's deposition was scheduled to begin, Mr. Lee advised that Wallace failed to appear for his deposition and that the deposition would need to be cancelled.¹ He further advised that he would advise as to whether he would continue to represent Wallace, and if so, provide alternate dates for his deposition. He has not done so to date, even though he filed a declaration on behalf of Wallace in support of Plaintiffs' Motion for Conditional Collective Certification ("Motion") on April 1. (Dkt. 92).

We conducted Neor's deposition on April 1 and necessarily we do not yet have her deposition transcript yet. Additionally, Plaintiffs filed consent to sue forms and declarations *just two days ago*

¹ We reserved our right to seek costs for the cancelled deposition.

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from four opt-in plaintiffs, none of whom were identified until the filing of Plaintiffs' Motion despite the fact that they were signed approximately three months earlier in January 2024. (Dkts. 84-87). Defendants may wish to depose those individuals, but we have been deprived of the ability to do so due to their untimely disclosure. Defendants believe they have a meritorious defense to Plaintiffs' Motion and anticipate using Plaintiffs' and opt-in plaintiffs' deposition testimony to substantively respond to the Motion given that factual and legal issues are often intertwined in class and collective cases. Defendants will be unable to comprehensively respond to the Motion without the benefit of a full factual record in light of incomplete discovery. We should not be disadvantaged due to our inability to complete all discovery due to Mr. Lee's actions.

As such, because depositions have not been completed due to Wallace's failure to appear for his noticed deposition, Mr. Lee's rescheduling of Neor's deposition until April 1 – the date in which Plaintiffs' Motion was due – as well as Mr. Lee's filing of declarations from four opt-in plaintiffs on April 1, Defendants request a 30 day extension, from the date all depositions are complete, to file an Opposition to the Motion. We further note that on November 14, 2023 during a pre-motion conference regarding Plaintiffs' anticipated Motion, Your Honor ordered that "Plaintiffs motion for collective certification will await the conclusion of discovery." (See minute entry for proceeding held on November 14, 2023).

We have requested Plaintiffs' consent to this relief and to allow us to depose Wallace and the opt-ins, but Mr. Lee has not responded to such request as of the date of this filing.

We thank the Court for its time and attention to this matter.

Respectfully,

/s/ Simi Bhutani

Simi Bhutani of
LEWIS BRISBOIS BISGAARD & SMITH LLP

cc: All counsel of record (via ECF)